IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 8409 OF 2005 .

D.K. Gavali & anr. ... Petitioners.
V/s.
B.D. Sharma & ors. ... Respondents.

Shri P.K.Dhakephalkar for the petitioners.

Shri Sunil Dighe for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 9.12.2005.

P.C. :

. Heard learned Counsel for the petitioners and Shri Dighe for the respondent No.1.

2. This petition is directed against the order of the School Tribunal, Mumbai, dated 21.10.2005 passed in Appeal No. MUM/10/2002, whereby the Tribunal has set aside the appointment of petitioner as Head Master and directed that the respondent No.1 be promoted to the post of Headmaster.

3. It is not in dispute that the petitioner was appointed as Assistant Teacher on 14.6.1977; whereas respondent No.1 was appointed as Assistant Teacher in 9.6.1969. It is also not in dispute that on the date of appointment respondent No.1 was senior to the petitioner in the cadre of Assistant Teacher.

4. Petitioner came to be promoted as Assistant Head Master on 18.8.1984 (Ex.A3) applying Model Roster since he belongs to Schedule Caste category. At the relevant time, post of Assistant Head Master was treated as reserved for Schedule Caste candidate as per Model Roster of the teaching staff declared pursuant to the directions issued by the Education Inspector (Gr. Bombay) (N) vide letter dated 1.5.1984 (Ex.A3). Relevant portion of the said letter reads thus:

> . "On the respect of the Model Roster of the teaching staff of your school vide this office Letter No.. A-13(M)9731 dated 11.1.84 to submit the proposal for the approval to the appointment of Shri D.K. Gawai as Asstt. Head Master in AFAC English School, Chembur, Bombay-71 as he is belonging to the schedule caste and the post of Asst. Head Master is reserved for the schedule caste candidate. Again one reminder to that effect is issued on 30.11.84 but so far said proposal has not been received in the office. You are requested to report compliance accordingly immediately.

5. The petitioner got advantage of the directions. Based on the above direction he got accelerated promotion even though respondent No.1 was senior to him since he was open category candidate. It is also not in dispute that the petitioner held the aforesaid post of Assistant Head Master as reserved category candidate right from 18.8.1984 till 29.12.2001 i.e. since the date of his promotion to the post of Assistant Head Master

till the date he was promoted to the post of Headmaster. While promoting to the post of Headmaster petitioner was treated senior to respondent No.1 since he was holding the post of Assistant Headmaster and the respondent No.1 was Assistant Teacher.

6. The above promotion of the petitioner to the post of Head Master was the subject matter of challenge in the appeal filed under section 9 of the MEPS Act, 1977 at the instance of respondent No.4.

7. The School Tribunal relying on the decision of the Division Bench of this Court in the case of **Smt. Sulabha Govind Vidwans vs. Sravan M. Shevale and ors. 1995(2) Bom.C.R. 561,** held that if appointment of the petitioner to the post of Assistant Head Master was on the premise that the post of Assistant Headmaster was reserved for Schedule Caste candidate, in that event, the promotion or appointment of the petitioner to the post of Assistant Head Master itself was bad and illegal since the said post of Assistant Headmaster was an isolated post; which could not have been treated as reserved post. The Tribunal holding to be so was of the opinion that such illegal appointment to the post of Assistant Headmaster could not create any legal right in favour of the

petitioner so as to claim seniority over respondent No.4 based on such illegal promotion. The school-management cannot be permitted to treat him as senior-most Assistant Teacher based on such promotion eligible to be appointed to the post of Headmaster. This order of the Tribunal is a subject matter of challenge in this petition filed under Article 226 and 227 of the Constitution of India.

8. Having heard learned Counsel for the petitioner, it is needless to mention that when petitioner was promoted as Assistant Headmaster, law of reservation was not very clear. In those years, even Model Roster was made applicable to the isolated post. The legal position has become clear only after the judgment of the Supreme Court in the case of Chakradhar Paswan vs. State of Bihar, AIR 1988 SC 959, wherein it was held that isolated post cannot be reserved. The Apex Court pronouncement was to be treated as Law for all the time existing in the past. It is, therefore, clear that petitioner could not have been promoted to the post of Assistant Headmaster in 1984 as reserved category candidate treating that isolated post as reserved. The said promotion cannot, thus, be said to be in accordance with law as such it would not create any legal right in favour of the promotee/petitioner herein.

9. It is true that nobody challenged the aforesaid appointment of the petitioner right from 1984, may be for want of clarity of law on reservation, but that by itself as stated hereinabove, would not create any legal right in the petitioner so as to claim seniority over other senior candidates with further right to claim promotion to the post of Headmaster. Merely because nobody challenged the promotion, that by itself will neither create any legal right in the petitioner nor it will preclude any senior Assistant Teacher to contend that promotion of the petitioner to the post of Assistant Head Master in 1984 was illegal. There cannot be estoppel against law.

10. In the above view of the matter, no fault can be found with the judgment and order of the Tribunal. The School Tribunal,has rightly relied upon the judgment of the Division Bench this Court in the case of **Smt. Sulabha Govind Vidwans (supra).**

11. Petition is, therefore, without any substance and it is dismissed in limine with no order as to costs.